INTRODUCTION TO AND MAJOR PROVISIONS OF ERISA

The Employee Retirement Income Security Act of 1974 (ERISA) was signed on September 2, 1974. Certain provisions of the law were retroactive, others were to be phased inover a ten-year period, but most sections became effective either upon enactment or January 1, 1975. The basiclaw has subsequently been explained and interpreted through issuance of regulations and legal opinions. This summary is intended to give the examiner a general overview of ERISA and address some of the major areas which must be complied with by a bank sponsoring a pension or profit-sharing plan for its own employees.

ERISA basically covers the administration and operation of pension plans, profit-sharing plans, Individual Retirement Accounts (IRA's) and Keogh Plans (HR-10 Accounts). Banks which sponsor these for their own employees or offer them to bank customers must comply with ERISA. Bank trust departments which administer the bank's own plan or the plans of others must also comply with ERISA.

The primary objective of ERISA is to protect the rights and interests of participants and their beneficiaries in the various plans and accounts indicated above. Plans and accounts which fall under ERISA are required to: contain certain data; be properly administered in an arms-length manner; make disclosures to employees, beneficiaries, and customers; and comply with government reporting requirements. Banks which sponsor or administer plans or accounts subject to ERISA are liable for fines, fiduciary liabilities, and contingent liabilities for violations of ERISA and for the mismanagement of such plans and accounts.

Two government agencies are primarily responsible for the administration and enforcement of ERISA, the Internal Revenue Service (IRS) and the Department of Labor (DOLI ERISA also established the Pension Benefit Guaranty Corporation (PBGC), which insures participants' and beneficiaries' interests in pension plans to a maximum monthly benefit amount. The PBGC also acts as trustee and receiver for pension plans which are voluntarily terminated by their sponsors or which fail for financial or other reasons. All pension plans must, under ERISA, being and make premium payments to the PBGC.

If a pension plan sponsored by a bank is terminated without sufficient assets to pay the participants' vested benefits, up to 30% of the bank's capital accounts is subject to forfeiture to the Pension Benefit Guaranty Corporation for the deficit in funding, in order to protect the interests of plan participants and beneficiaries.

The following summary gives the major provisions of ERISA applicable to banks sponsoring pension or profit-sharing plans for their own employees. Review of these major points should enable the examiner to determine whether a bank is in substantial compliance with ERISA. Some of the summary points represent a consolidation of many sections but, where practicable, citations are given indicating which sections of ERISA may be involved in a violation. Such violations should be scheduled as Group 1violations in the report of examination.

<u>Form of Plan</u>
Employee benefit plans (primarily pension and profit-sharing plans) we to bein writing (ERISA 402(a)(1)) and must meet ERISA's minimum standards. New plans must meet ERISA's standards, older plans must be revised to meet those standards. Revisions of older plans must be effective not later than 12-31-76 (ERISA 211).

<u>Tax Status of Plan</u>
Revised plans and all new plans should be submitted to the Internal Revenue Service for determination as to whether or not they meet the tax-deductible sections of the Internal Revenue Code. The IRS will issue a Letter of Determination in this regard of which the bank should retain a copy. All future revisions of plans should go through this same procedure to ensure the tax qualification has not been jeopardized.

Contents of Plan

Employee benefit plans noted above must address certain areas, which must meet minimum standards set in ERISA:

Participation - When employees are allowed to join the plan (ERISA 202).

Vesting - Participants' nonforfeitable rights to benefits. Usually phased in over a period of time. Must reach 50% vesting after 10 years and 100% vesting not later than 15th year (ERISA 203(a)).

Funding - Provision must be made to provide sufficient assets to make benefit payments (ERISA 302 and 402(b)(1)).

Fiduciary Responsibilities - A "named fiduciary" must be appointed in the plan (ERISA 402(a)(2)), which must be run solely for the benefit of participants and beneficiaries (ERISA 404(a)(1)).

Operation of Plan

(1) At least one trustee must be appointed to operate the plan (ERISA 403(a)) Independent of the plan's sponsor. The trustee need not be a bank. Any trustee must conform to sections of ERISA which require arms-length transactions of the plan to prevent self-dealing and other conflicts of interest (ERISA 406). The plan must be operated and invested solely in the interests of plan participants and beneficiaries (Internal Revenue Code Section 401(a) and ERISA 404(a)(1)), not for the plan sponsor or trustee.

(2) A trust agreement detailing the responsibilities and duties of the trustee should be in writing (ERISA 403(a)). The trust agreement may be included with the plan as an all-inclusive document, but normally this is not the case. Trust agreements are not necessary if the plan's assets are solely insurance policies or annuity contracts issued by insurance companies (ERISA 403(b)).

(3) Investments must generally follow the "Prudent Man Rule" set forth In ERISA 404(a)(1)(B). Investments must be sufficiently diversified to minimize risk of losses (ERISA 404(a)(1)(C)). Conflicts of Interest and self-dealing must be avoided. Pension plan investments in own-bank stock, bonds, capital notes, or other securities, in total, amount to no more than 10% of the market value of the plan's assets (ERISA 407(a)). Real estate or other assets owned by the plan and leased to the bank are included in the same 10% limit (ERISA 407(a)). The bank or Its parent company may not borrow from the plan (ERISA 406(a)(1)(B)).

Disclosures to Employees and Beneficiaries

(1) All employees covered by a pension or profit-sharing plan should have received a summary of the plan(s) not later than November 16, 1977, and if the bank is sponsoring the plan it should have a copy of this summary available. These "Summary Plan Descriptions" must contain all relevant information and yet be understandable to the average employee (ERISA 102(a)(1)). Certain disclosures must be made, including a statement that both the plan sponsor and plan trustee(s) may be sued for non-compliance with ERISA, together with names and addresses of who is to receive service of legal process (DOL Reg. 2520).

(2) Each plan participant must receive a summary of the annual report required to be filed with the Labor Department (ERISA 104(b)). As an alternative, the bank may furnish the entire report to each employee if it wishes, but the bulk of the report makes this unlikely.

(3) Each plan participant has the right, once a year, to request in writing a statement of his account in the employee benefit plan (ERISA 105). Some banks are providing this statement on a regular, unasked-for basis, but this may not relieve them of the duty to provide one on request.

(4) Plan participants have the right to Inspect and copy major documents pertaining to their plan(s). These documents must be reasonably available to an participants. The bank may charge up to 25¢ per page for copies which are made of documents (ERISA 104(b)).

Reports to Government Agencies

Various reports are required to be filed with the Internal Revenue Service and with the Department of Labor for pension and profit-sharing plans. Pension plans must also file a few reports with the Pension Benefit Guaranty Corporation. The two major reports for pension and profit-sharing plans are summarized below:

(1) Plan Description (Labor Department Form EBS-1).

For plans started after 1-31-76, EBS-1 must be filed within 4 months of establishment of the plan. For plans in existence before 1-31-76, EBS-1 was to be filed not later than 7-30-76 (DOL Reg. 2520 and ERISA 104(a)(2)).

(2) Annual Report (Form 5500 - 100 + employees, Form 5500-C - under 100 employees).

Beginning in 1978 combined report for Labor Department, IRS, and PBGC. Generally due 7 months after plan's fiscal year-end. Must include report of an enrolled actuary. If 100 or more employees, report must include plan's financial statement, with opinion of an independent accountant (DOL Reg. 2520 and ERISA 104(a)(5)).

The actuary's report will indicate the amount of unfunded vested liabilities. This is a contingent liability of the bank (up to a maximum of 30% of the bank's capital accounts) if (1) the bank contemplates terminating its pension plan, or (2) if the bank itself is in such a position that it may be closed. In such cases, the contingent liability should be scheduled on the appropriate commercial and trust report pages.

Note: This material was distributed to Regional Offices and field examiners as R/D Memo 53-78, dated May 3, 1978.